

Comments and Responses

ARC 7133B

Rule Summary

Implements the Office of Substitute Decision Maker and establishes standards and procedures for those appointed as substitute decision makers. Also, establishes the qualifications of consumers eligible for services.

Comment Period

September 10, to October 1, 2008

The following individuals and organizations provided the written comments below:

Jeffrey Clark, Assistant Linn County Attorney
Eve Casserly, Citizen

Comment: The Department of Elder Affairs previously identified 44,663 Iowans who require some level of substitute decision making. Under the proposed rules the state office or local office would designate individuals to serve as SDMs. Under the proposed rules, absent some reason for variance, the case load for each SDM would not exceed 10 and could be less. This would mean the state and local offices would need to fund and oversee approximately 4,466 SDM's who would start from scratch on potentially 44,663 referrals.

It seems that a more realistic approach would be for the state and local offices to act in their corporate capacity as the SDM appointed by the court. It would be up to the administrators to tap into and coordinate with their existing community service providers who would continue to provide social, medical, financial and other assistance and, hopefully, with some form of case management in place could do the bulk of the "legwork" leaving the state and local offices to be the "legal entity" with the actual authority to act in financial and placement matters and in response to the needs already identified by other agencies.

Not only do the proposed rules suggest duplication of efforts, current funding levels could not support the staff to serve more than a handful of Iowans.

Response: The Office will serve only in cases of last resort when there are no other available resources for the client as provided under Iowa Code. There is no indication that all of the 44,663 Iowans identified in the previous survey have no alternative resources or options available for assistance and would be cases of last resort.

The staffing ratio rule (321-22.5) is applicable only to the State Office and not local offices. The State Office will not be considered a last resort option if local programs and resources can assist a client.

Comment: 22.13 (5) - additional fees...

Section b - as written: "fees for the sale of real or personal property shall be 10% of the net proceeds resulting from the sale of the property..."

Section c - "further allowances as are just and reasonable...for actual necessary and extraordinary expenses and services".

I think this fee is exorbitant. Presumably there is a realtor. The realtor collects 6 to 7% of the selling price as his fee. Out of that he pays his expenses, time, advertising, etc. I do not see that there needs be paid any fee to the SDM unless he/she is personally doing fix-up work (painting, cleaning, etc) to make the property more readily salable.

Response: If a case requires the sale of real estate, the time and effort will be compensated at a level not to exceed actual costs (321-22.13). Compensation for such costs are recognized by other public guardianship programs.

Comment: 321 - 22.14 (231E,633) Fee schedule for services provided by an SDM:
Specifically..."Monthly SDM services for conservator, durable power of attorney for health care and general power of attorney for financial matters:

As Proposed:

| Total value of liquid assets | Monthly fee | Annual |
|------------------------------|-------------|---------|
| \$6,400-9,999 | \$100 | \$1,200 |
| \$20,000-\$29,000 | \$150 | \$1,800 |
| \$80,000 - \$89,000 | \$300 | \$3,600 |
| \$100,000 or above | \$350 | \$4,200 |

Again I think that this fee is too high. For those with the least amount of liquid assets, the annual fee would be \$1,200 and would represent 12% on upwards to 18.5% of the person's total net worth.

\$20,000 in net worth would yield a fee of 9% of the net worth

\$80,000 in net worth would produce a fee of 4.5%

\$100,000 in net worth would yield a fee of 4.2% - still a hefty amount of return in a society where a bank CD may pay between 2 and 3% return.

In the scale as presented, the less a person has, the greater percentage he/she pays. This doesn't seem right. Case management fees (for AAA's) are limited to \$70 a month.

With nursing home costs as they are (\$167 a day in a NW Iowa nursing home I am dealing with....or \$60,955 a year), any person with incomes as reflected in the above table are going to be off Medicare and on Medicaid soon anyway.

I am currently filling this SDM role for a 95 year old relative. I would be most embarrassed to take one penny for my work. This is my second experience in this role. I understand the state needs to recoup the costs of paid employees, but I think this scale needs to be re-worked.

Response: The calculations in the comment above assume an individual will be charged a monthly fee based on an annual value of liquid assets; however, the fees are based on the amount of liquid assets an individual has each month. A client with liquid assets below \$6,500 in a given month will not pay a fee. This amount is three times greater than the \$2,000 in liquid assets an individual is allowed to have each month when qualifying for Medicaid. The Department may also adjust or waive a fee based upon the ability of the consumer to pay, if financial hardship to the consumer would result, or upon a finding that collection of a fee is not economically feasible (321-22.13(1)(b)).